145-649.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

JOSEPH NETHERCLIFF ET AL., plaintiffs in error,
vs.
WILLIAM H. ROBERTSON, collector, defendant in error.

No. 1143.

In the Supreme Court of the United States

OCTOBER TERM, 1886.

JOSEPH NETHERCLIFF ET AL., plaintiffs in error,
vs.
WILLIAM H. ROBERTSON, COLLECTOR, defendant in error.
No. 1143.

Comes the Attorney-General of the United States and presents a copy of a letter from the Secretary of the Treasury showing the importance of this case, and the necessity of an early decision thereon, and he makes such letter a part of this motion, and moves the court to advance said cause on the docket and assign it for argument and submission at an early date.

A. H. GARLAND,
Attorney-General.

TREASURY DEPARTMENT, *November* 29, 1886.

SIR: I have the honor to transmit herewith copy of a communication, dated New York the 23d instant, from Messrs. Tremain & Tyler, in which, as attorneys for the plaintiffs in the case of *Nethercliff et al.* against *Robertson, collector*, on the calendar of the United States Supreme

Court for the October term, 1886, they request that the case be advanced for argument at some convenient day during the present term of the court.

As represented by the said parties, the case is of considerable importance to the Government in its relation to the current administration of the customs as well as to the people at large in relation to our commerce with the Dominican Republic, the questions involved being whether, by virtue of the "most favored nation" clause in the existing treaty between the United States and the Dominican Republic, raw sugar imported from that island is or is not entitled to free entry under the treaty between the United States and the Hawaiian Government and the statute passed for the purpose of carrying the latter into effect.

If, therefore, it meets with your concurrence I would suggest that the request of the parties be complied with, and that the United States Supreme Court be moved to advance the case so that it can be argued and determined at as early a day as practicable.

Respectfully yours,

D. MANNING,
Secretary.

The honorable the ATTORNEY-GENERAL.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1143.

JOSEPH NETHERCLIFT, HUGH J. ANDERSON AND CHARLES ALLAN, PLAINTIFFS IN ERROR,

vs.

WILLIAM H. ROBERTSON, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Joseph Netherclift, Hugh J. Anderson, and Charles Allan, plaintiffs, and William H. Robertson, collector of the port of New York, defendants, a manifest error hath happened, to the great damage of the said Joseph Netherclift, Hugh J. Anderson, and Charles Allan, as is said and as appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 2d day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

2 UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to forty-five, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Joseph Netherclift, Hugh J. Anderson, and Charles Allan, plaintiffs in error, against William H. Robertson, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this seventh day of October, in the year of our Lord one thousand eight hundred and

eighty-six, and of the Independence of the United States the one hundred and eleventh.

[Seal of the U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

[Endorsed:] 9986. U. S. Supreme Court. Joseph Netherclift *et al.*, plaintiffs in error, *vs.* W. H. Robertson, defendant in error. Writ of error. Tremain & Tyler, attorneys for plaintiffs in error, 167 Broadway, New York city.

The within writ of error is hereby allowed, and security, by deposit with the clerk, having been given, this writ of error is a supersedeas.

Dated October 1st, 1886.

HOYT H. WHEELER.

Service of a copy of the within writ of error and a copy of the above order allowing said writ is hereby admitted this second day of October, 1886.

STEPHEN A. WALKER,
Attorney for Defendant in Error.

[Stamped:] U. S. circuit court. Filed Oct. 2, 1886. Timothy Griffith, clerk.

3

Summons.

Superior Court of the City of New York.

JOSEPH NETHERCLIFT, HUGH J. ANDERSON, & CHARLES ALLAN, Plaintiffs,

vs.

WILLIAM H. ROBERTSON, Collector of the Port of New York, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorneys within twenty-days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, August 18th, 1885.

TREMAIN & TYLER,
Plaintiffs' Attorneys; Office and Post-Office Address, No. 167 Broadway, New York City.

4 Endorsed: New York superior court. Joseph. Netherclift and others *vs.* William H. Robertson, collector, etc. Copy [of] summons. Tremain & Tyler, plaintiffs' attorneys. Rec'd Sept. 3, 1885, U. S. attorney's office.

5 The President of the United States of America to the judges of the superior court of the city of New York, Greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against William H. Robertson, defendant, by Joseph Netherclift *et al.*, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court at the city of New York, on the 25th day of Sept, 1885, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, Esquire, Chief Justice of the Supreme Court of the United States, the 21st day of September, in the year one thousand eight hundred and eighty-five.

[L. S.] TIMOTHY GRIFFITH, *Clerk.*

WILLIAM DORSHEIMER,
United States Attorney, Attorney for Defendant.

6 [Endorsed:] 9986. U. S. circuit court. Joseph Netherclift *et al. vs.* William H. Robertson. Copy [of] certiorari. W. Dorsheimer, U. S. attorney, attorney for defendant.

Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York.

New York, Sept. 21, 1885.

Yours, WILLIAM DORSHEIMER,
U. S. Attorney, Attorney for Defendant.

To T. & T., plaintiffs' attorneys.

Due service of a copy of the within and of the above notice is hereby admitted.

New York, Sept. 21, 1885.

TREMAIN & TYLER,
Plaintiffs' Attorneys.

7 *Amended Bill of Particulars of Merchandise Imported by Netherclift and Anderson.*

Description of goods—Sugar, sugar & molasses.
Whence imported—Puerto Plato, Puerto Plato.
Name of vessel—Santo Domingo, Geo. W. Clyde.
Date of invoice—Oct. 13, '84; Sept. 22, '84.
Date of entry at custom-house—Oct. 23, '84; Oct. 2, '84.
Amount of duty illegally exacted—2,413.22, 5,770.30.
Date of payment of duties in excess—Nov. 6, '84; Oct. 13, 15, '84.
Protest filed—Nov. 28, '84; Nov. 28, '84.
Date of appeal to Secretary of the Treasury—Nov. 28, '84; Nov. 28, '84.
Date of Secretary's decision—June 24, '85; June 24, '85.

8 United States Circuit Court, Southern District of New York.

JOSEPH NETHERCLIFT, HUGH J. ANDERSON, and CHARLES ALLAN
against
WILLIAM H. ROBERTSON, Collector of the Port of New York. } No. 9986.

The above-named plaintiffs, for amended complaint in this action, state:

I. That the defendant, during the times hereinafter mentioned, was collector of the customs of the United States at the port of New York, and that the plaintiffs during said times were copartners in trade, doing business in New York and elsewhere under the firm name of Netherclift & Anderson, and in said business imported and entered at the port of New York certain merchandise at the times and by the vessels specified in the plaintiffs' bill of particulars, which is hereby made part of this complaint.

II. That the defendant as such collector exacted from plaintiffs, as and for duties on said merchandise, the sums specified in said bill of particulars, to wit, the sum of eight thousand one hundred and eighty-three $\frac{52}{100}$ dollars ($8,183.52), in excess of the amount required by law, and which excessive sum the plaintiffs, on or about the dates specified in the said bill of particulars, and in order to obtain possession of said goods, were compelled to pay and did pay to the defendant.

III. That plaintiffs filed with the said defendant due and timely protests in writing upon each and every entry of said goods against the decision exacting said duties, setting forth distinctly and specifically the grounds of objection thereto and also as above stated.

IV. That plaintiffs have made due and timely appeal in each case to the Secretary of the Treasury, whose decision on each appeal has either been rendered within ninety days previous to the beginning of this suit or has been delayed more than ninety days from the date of such appeal on each and every entry.

V. That the said bill of particulars states for each importation separately the date of entry at the custom-house, the precise amount of duty said to have been exacted in excess, the date of payment of said duty, and the filing of said protests, of the appeals to the Secretary of the Treasury and his decision thereon, if any, together with the other particulars required by law.

VI. That the sums so exacted as aforesaid have not been repaid to the plaintiffs and are still due and owing to them.

Wherefore plaintiffs demand judgment against defendant for the sum of eight thousand one hundred and eighty-three $\frac{52}{100}$ dollars ($8,183.52), with interest thereon from the several dates of payment as they appear on said bill of particulars, together with the costs and disbursements of this action.

TREMAIN & TYLER,
Plaintiffs' Attorneys,
Office and P. O. Address, 167 Broadway, New York City.

9 [Endorsed:] No. 9986. U. S. circuit court, southern district of New York. Joseph Nertherclift *et al.*, plaintiffs, *vs.* William H. Robertson, collector of the port of New York, defendant. Amended complaint and bill of particulars. Tremain & Tyler, plaintiffs' attorneys, No. 167 Broadway, New York. To William Dorsheimer, U. S. attorney, and attorney for defendant. Recorded Nov. 11, 1885. U. S. attorney's office.

10 Circuit Court of the United States for the Southern District of New York.

JOSEPH NETHERCLIFT *et al.*
versus
WILLIAM H. ROBERTSON, Collector, etc.

The defendant answers to the complaint as follows:

I. He denies that the true duty or that the true and lawful rate of duty on the goods referred to in the complaint was as stated in the complaint, and he denies that the plaintiffs were compelled to pay or did pay defendant, as collector or otherwise, the sum stated in the complaint or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was enacted as duties on said goods or otherwise.

II. He denies that the plaintiffs filed with defendant any protest or protests in writing in which the grounds of objections to the exaction of duties on said goods were distinctly and specifically stated.

III. He denies that the sum stated in the complaint or any sum is now due and owing the plaintiffs.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the complaint to have been imported at the times therein mentioned were, in fact, such goods as are described in the said complaint.

11 V. And, further answering, defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made were demanded of plaintiffs and were by plaintiffs voluntarily paid to him in his capacity as collector of customs as and for duties due the United States on imported merchandise, and were forthwith before the commencement of this action, and before the receipt by defendant of any protest or objection on the part of the plaintiffs, paid over by the defendant in his official capacity aforesaid to the United States and placed beyond his control.

VI. And, further answering, defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made were sums due from plaintiffs to the United States as duties according to the rate of duty imposed by law upon articles of merchandise imported by plaintiffs and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon plaintiffs' entry thereof were collected or received by defendant from the plaintiffs.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

STEPHEN A. WALKER,
United States Attorney, Attorney for the Defendant.

[Endorsed:] 9986. U. S. circuit court, southern district of New York. J. Netherclift *et al. vs.* W. H. Robertson, collector, etc. Answer. Stephen A. Walker, United States attorney, attorney for defendant.

Due service of a copy of the within answer is hereby admitted. New York, M'ch 13th, 1886.

TREMAIN & TYLER,
Plaintiffs' Attorney.

To T. & T., plaintiffs' attorney.

12 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the 20th day of April, in the year of our Lord one thousand eight hundred and eighty-six.

Present: The Honorable Alfred C. Coxe, sitting as circuit judge.

JOSEPH NETHERCLIFT, HUGH J. ANDERSON, & CHARLES ALLAN
vs.
WM. H. ROBERTSON. } 9986.

Now come the plaintiffs, by Tremaine & Tyler, their attorneys, and move the trial of this cause; likewise comes the defendant, by Stephen A. Walker, Esq., U. S. attorney, his attorney; thereupon a jury is empaneled and the cause proceeds to trial. After hearing the evidence of the parties and the argument of counsel, on Thursday, June 24th, 1886, the court directs the jury to find a verdict for the defendant. The jury therefore render a verdict whereby they find for the defendant. It is ordered that the plaintiff have a stay of proceedings on said verdict for sixty days within which to
13 prepare and serve a bill of exceptions herein.

A copy.

[L. S.] TIMOTHY GRIFFITH, *Clerk.*

14 *Judgment.*

United States Circuit Court, Southern District of New York.

JOSEPH NETHERCLIFT *et al.*
vs.
WILLIAM H. ROBERTSON. } 9986.

The issues in this action having been brought for trial before Mr. Judge Coxe and a jury, at a circuit court, of the April term, 1886, and the issues having been tried and a verdict for the defendant having been duly rendered on the twenty-fourth day of June, 1886, and his costs having been adjusted at $48.85:

Now, on motion of Stephen A. Walker, United States attorney, for

defendant, it is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $48.85, his taxed costs, and have execution therefor.

Judgment signed this 25th day of Sept., 1886.

JOHN A. SHIELDS,
Deputy Clerk.

15 [Endorsed:] 9986. United States circuit court. Joseph Netherclift *et al. vs.* W. H. Robertson. Judgment-roll. Stephen A. Walker, United States attorney, for defendant. Costs, $48.85. U. S. circuit court. Filed Sept. 25, 1886. Timothy Griffith, clerk.

16 *Plaintiffs' Bill of Exceptions.*

United States Circuit Court, Southern District of New York.

JOSEPH NETHERCLIFT, HUGH J. ANDERSON, and CHARLES ALLAN

vs.

WILLIAM H. ROBERTSON, Collector of the Port of New York.

And afterwards, to wit, on the 20th and 21st days of April, 1886, the issues in this case came on to be tried before the Hon. Alfred C. Coxe, district judge of the United States for the northern district of New York, duly assigned to hold this court, and a jury empaneled and sworn, the parties appearing by their counsel, Mr. H. E. Tremain, Mr. I. Phillips, and Mr. C. Curie for the plaintiffs, and the United States district attorney, Mr. Stephen A. Walker, and his assistant, Mr. Thomas Greenwood, for the defendant; and during the course of said trial, and before the rendering of said verdict, counsel for plaintiffs did take and allege sundry exceptions to the rulings of the court, which said exceptions were duly allowed and are hereinafter severally set forth, together with so much of the testi-

17 mony as is pertinent thereto.

To sustain the issues on the part of the plaintiffs evidence was introduced tending to show that the plaintiffs imported by the vessels named in the bill of particulars from the port of Puerta Plata, Santo Domingo, in the Dominican Republic, certain merchandise, upon which duty was paid, amounting in all to eight thousand nine hundred and seventeen dollars and forty cents ($8,917.40), including interest at six per cent. to the date of trial.

The duty was claimed by plaintiffs to have been illegally exacted. The plaintiffs' evidence also tended to show that plaintiffs caused seasonable protest to be lodged with the collector and appeals to be taken to the Secretary of the Treasury, and this suit to be instituted within the regular statutory period of time.

The following is a copy of the protest:

To the collector of customs, New York.

SIR: We hereby protest against your ascertainment, collection, and liquidation of and demand for duties on the importation

18 of merchandise therein mentioned and embraced in our entries, and each and every of them, as follows, viz: Str. St. Do-

mingo; date of entry, Oct. 23rd or 24th, 1884. Str. George W. Clyde; date of entry, Oct. 2nd, 1884.

We claim that said merchandise is by law exempt from duty and should have been admitted free of duty.

And we likewise protest against the fees or special compensations of any nature whatsoever exacted from us on the entries and liquidations of the entries and appraisements or reappraisements of said goods and on all duties on the cost or value of all packages, cartons, the usual and necessary sacks, crates, coverings of every kind, boxes, commissions and charges for packing, insurance, preparing, putting up, and against any duty charged us on foreign commissions or additions of the appraiser, as and for such commissions, or for so-called factor's profit, and other miscellaneous charges of every kind or nature whatsoever, and against including the same or any part thereof in the dutiable value, all of the same being unwarranted by law.

We claim the proper and lawful duty on said goods is to
19 be based and estimated on the true and actual foreign value thereof, if ascertainable, and if not, then on the cost of production; and we claim also that the boxes and coverings on said goods, if dutiable at all (and we say they are not), are not chargeable with duty beyond the rate chargeable upon the materials of which they are composed; and we furthermore protest against the reappraisement of said goods as being irregular and unlawful; that the said appraiser did not fully and fairly examine the goods, protesting also that the merchant appraiser was not a discreet and experienced merchant and was not qualified by law to act as such.

And we also protest against the payment of any and all duties not legally chargeable upon said importations; and, hereby reserving all questions of law or fact that may arise, will specify further details as may be required.

Your ascertainment, liquidations, and exactions as aforesaid are submitted to under compulsion, and we pray said legal exactions only for the purpose of obtaining or retaining possession of our goods, and we claim a refund accordingly. You are hereby
20 notified that this protest is intended to apply to all future similar importations, and that the duplicate protest, which is herewith submitted for transmission by you to the Secretary of the Treasury, is our appeal to him from your decision against this protest, and also from your exaction on all such entries in future as fully as if formally made on each entry thereof; and this protest is expressly hereby made to apply to all similar future exactions. In the event that you shall not yet have made your final decision on any of our said entries or respecting said exactions, you are hereby notified to read this protest then in your office, upon rendering final decision, of which you are hereby requested to notify us.

Dated New York, Nov. 28, 1884.

Respectfully, NETHERCLIFT & ANDERSON,
By TREMAIN & TYLER, *Att'ys.*

Copy of Appeal.

To the Secretary of the Treasury:

SIR: We hereby appeal from the decision of the collector of the customs at this port on the above importations for the reasons specified in our foregoing protests.

Dated New York, Nov. 28, 1884.

21 Respectfully, TREMAIN & TYLER,
Att'ys for Netherclift & Anderson;
Office and P. O. Address, 167 B'way, New York City.

(Endorsement:) 24836. Netherclift & Anderson. St. Domingo and Geo. W. Clyde. Rate and charges.

On the back of the protest is a custom-house stamp, showing the receipt of protest by the collector November 28, 1884, and that the appeal was lodged at the same time.

Upon this appeal the following communication and decision were read in evidence, namely:

TREASURY DEPARTMENT, OFFICE OF SECRETARY,
WASHINGTON, D. C., *June* 24, 1885.

Netherclift & Anderson, per Tremain & Tyler, att'ys, 167 Broadway, New York.

GENTLEMEN: You are hereby referred to the collector of customs at New York for the Department's decision of this day on the following appeal filed by you, viz.: 9487 K, dated Nov. 28, 1884.

Respectfully, C. S. FAIRCHILD,
Assistant Secretary.

22 TREASURY DEPARTMENT, *June* 24, 1885.

Collector of customs, New York.

SIR: Your assessment of duty on certain sugar and molasses claimed to be entitled to free entry under the most "favored nation clause" of existing treaties, being in accordance with the Department's decision of April 9, 1884, (Ss. 6292), is hereby affirmed on the appeals specified in the annexed schedule.

Very respectfully, C. S. FAIRCHILD,
Assistant Secretary.

* * * * * * *

The merchandise in question was classified for duty in part as molasses, it being in part molasses, and the balance was classified as sugar not above No. 13, Dutch standard in color. The merchandise was assessed for duty under Schedule E of the tariff act approved March 3rd, 1883.

Plaintiffs called as a witness FRANK HAY, who was duly sworn, and whose testimony in part tended to show as follows:

Q. (Witness shown three invoices by the vessels Geo. W.
23 Clyde and by the Santo Domingo, respectively, in October and September, 1884, and asked:) Does that class of goods come under your official supervision?

A. Yes, sir.

Q. You may refresh your recollection by the papers shown you and state whether the articles in these two invoices were brown or unrefined sugars and molasses.

A. Sugars; what are commercially designated as muscovado sugars.

Q. Unrefined?

A. Unrefined; yes, sir.

Q. It is not true that the sugars in those invoices were unrefined sugars of such kinds and grades that if they had been grown, produced, or manufactured in the Hawaiian Islands instead of the Dominican Republic they would have been entitled to be and would have been admitted free of duty under the Hawaiian treaty and the act of Congress of August 15th, 1876. Were those sugars of the grades of unrefined sugars commonly known as Sandwich Island sugars? You know the character of the brown unrefined sugars, do you not?

A. Yes, sir.

Q. And you know the grade of sugars that are commer-
24 cially classed as unrefined sugars?

A. Yes, sir.

Q. Were the sugars in those invoices of those kinds of grades?

Q. (By defendant's counsel): Where did you get this knowledge, Mr. Hay?

A. Well, I have received Sandwich Island sugars here.

Q. How many cargoes?

A. I have received three.

Q. How many cargoes of Hawaiian or Sandwich Island sugars did you ever see?

A. I have seen three very large cargoes.

Q. More than three?

A. There never have been many imported at this port, but I have seen samples years ago and I have seen cargoes of it.

Q. How long ago?

A. Six or eight or ten years ago.

Q. How many samples did you ever see?

A. Well, perhaps fifty.

Q. Brought in at what time?

A. I mean including these two cargoes I speak of.

Q. How many did you see out of those three cargoes?

A. I can hardly tell.

Q. One package in every ten?

A. Oh, every thirty or forty or fifty of that character.

Q. In addition to that you have seen how many samples?

A. Several.

Q. Did you ever visit the Sandwich Islands or Hawaiian Islands?

Objected to. Objection overruled. Plaintiffs' counsel duly excepted.

A. No, sir.

Q. Did you ever see the sugars from those islands?

A. I have seen them in the port of New York.

Q. You have seen New York sugars that were said to have come from those islands?

A. Yes, sir.

Q. But you did not know that any of those samples you saw actually came from the Hawaiian Islands?

A. Not from my personal knowledge.

Q. (By plaintiffs' counsel:) Were the samples of Sandwich Island sugars that you saw of the character and grade which you had seen before?

A. Exactly; I have seen them before.

Q. I say were they of the grade of sugars that you had seen before?

A. Yes, sir.

Q. Were they unrefined sugars of the same grade that you had been accustomed to handle?

A. They were of a very fine grade; most of them were centrifugal sugars, very much better than these.

Q. Were they a higher grade?

A. Very much higher grade than these—what they call seconds.

Q. Are the low grades of unrefined sugars grades with which you have always been familiar?

A. Yes, sir; that is, for ten or fifteen years.

Q. Were the samples of Sandwich Island sugars which you saw sugars similar in character to the low grade, except that they were refined a little more; is not that true?

A. No, sir; not that.

Q. What is the difference?

A. They were what are commercially known as centrifugal sugars.

Q. That is a better sugar?

A. Yes, sir; most of them; then there were seconds of the same character that molasses is made of—centrifugal molasses; this centrifugal would correspond fairly with the Cuba sugars of the same kind.

Q. To the low sugars?

A. Called molasses or seconds, and these (indicating plaintiffs' invoices) were very much like them in character.

Q. Are you familiar with the commercial grades of sugars?

A. Yes, sir.

Q. Are those commercial grades distinguished in part by numbers?

A. By the Dutch standard of color.

Q. By the Dutch standards of color, which are distinguished by numbers, are they not?

A. Yes, sir.

Q. And also by polariscopic test?

A. Yes, sir.

27 Q. And it is by those two standards that the grades of unrefined sugars are commercially accepted, are they not?

A. Yes, sir; I suppose it is; at all events the duty is assessed upon low grades.

Q. Now, what is the ordinary grade of sugars by the Dutch standards that are commonly known and accepted as Sandwich Island sugars—about what numbers by the Dutch standard; is there any difference between muscovado unrefined sugars from the Sandwich Islands and muscovado unrefined sugars from any other place?

A. Not in general terms; there is not; no, sir.

Q. (By the court:) What sugar has been admitted at this port free of duty which came from the Sandwich Island?

A. There were three large cargoes of Sandwich Island sugars imported into this port in 1882; they ranged in color from 9 to 16, Dutch standard.

Q. (By plaintiffs' counsel:) That is the ordinary grade of unrefined sugars?

A. That is the grade that I saw, and the only three cargoes that I ever did see.

28 Q. Were they admitted free?

A. Yes, sir.

Q. They were of the grade of sugars that were well known in the commercial world, were they not?

A. Yes, sir.

Q. It is by the Dutch standard of color that grades of unrefined sugars are commercially distinguished, is it not?

A. No, sir; not by the Dutch standard. They are commercially distinguished as centrifugal, muscovado, or as molasses sugar.

Q. All of these sugars are unrefined sugars, of various grades, are they not?

A. Yes, sir.

Q. And the grades in commercial usage allude to the Dutch standard of color, do they not?

A. More now to tests.

Q. Fifteen years ago it was the Dutch standard of color, was it not?

A. Yes, sir.

Q. Were these the same kinds of sugars?

A. Yes, sir.

Q. Were the sugars in these invoices of such kind or grades that if they had been grown, produced, or manufactured in the Sandwich Islands instead of in the Dominican Republic, they would have been passed by you and admitted in this port free of duty?

A. Yes.

29 Q. In respect to the grades of unrefined sugars, the grades that you have mentioned are not above 13, they were very common, were they not, many years ago?

A. No; some of them were 10, 12, and 13, when they were fine; but the lower ones, 7, 8, and 9, were very poor.

Q. Are all the sugars now made of a higher grade?

A. No, they are of all grades now.

Q. These grades from 8 to 16 were very common, were they not?
A. From 7 to 10.
Q. You have seen all such grades for a great many years, have you not?
A. Yes, sir; longer than fifteen years, or about that, I think.
Q. (By plaintiffs' counsel:) Is it not true that unquestionably the sugar imported by the plaintiffs by the Santo Domingo and the Geo. W. Clyde, in October, 1884, was the same quality, grade, character, and commercial designation as raw sugars imported from the Sandwich Islands, and like manufacture, and that if the sugars in question had been imported from the Sandwich Island they would have been admitted free of duty under the treaty existing between
30 this country and the Sandwich Islands?
A. That, as a matter of fact, is true.

ARCHIBALD J. C. ANDERSON, also called as a witness for the plaintiffs, was duly sworn. His testimony tended to show as follows:

I am the representative of the firm of Netherclift & Anderson, plaintiffs, and acted for that firm in these transactions with the custom-house on the importations of two cargoes of sugar by the Clyde and Santo Domingo, made the entries of them at the custom-house, and paid the duty.

On the Clyde, duty paid Oct. 15	$5,770 30
Interest to date	523 14
On the Santo Domingo, duty paid Nov. 6, 1884	2,413 22
Interest	210 74
Total, principal and interest	$8,917 40

Q. These goods were imported from the Dominican Republic?
A. Yes, sir; from the port Puerto Plata?
Q. Is that the principal port of that Republic?
A. It is not the capital.
Q. Is it the port of exportation?
A. Yes, sir.
Q. Were these sugars the growth and product of the Dominican Republic?
31 A. To the best of my knowledge and belief, it was imported as such.
Q. (By defendant's counsel): But you do not know it?
A. Except from information. I received the goods.
Q. (By plaintiffs' counsel): From whom did you receive it?
A. Lithgow & Brothers, who are manufacturers of sugars. I am their agents for all of their consignments. I represent them here. I receive their cargoes at this port. I have received their cargoes before and since; the figures I have given include the duty on the molasses. I deal in molasses, and have known it as a merchantable commodity for about eighteen years; in respect to general character there is no distinction between molasses that comes from one place and molasses that comes from another place; the molasses in suit

was similar to the molasses which is commercially known in the market; in other words, it is molasses. I caused protests to be filed. Plaintiffs withdrew this sugar from the warehouse for their own consumption.

32 By the COURT (referring to the above-recited letter from the Secretary of the Treasury): Does that show there was an appeal from the decision?

DEFENDANT'S COUNSEL: No; he has already shown that. He has offered in evidence the decision; that is all that is necessary. He has shown that he has paid the duty; that he protested in time. He has shown that he appealed, and he has shown that he commenced his suit in time. * * *

The COURT: Do you raise any question as to all conditions precedent being fulfilled?

DEFENDANT'S COUNSEL: I raise none whatever, except as to the sufficiency of the protest.

The plaintiffs claimed exemption from duty on the merchandise in question by virtue of article 9 of the treaty between the Dominican Republic and the United States as affected by the Hawaiian treaty and the act of Congress approved August 15th, 1876, and the provisions of section eleven of the tariff act of March 3rd, 1883.

Article 9 of said treaty reads as follows:

33 "No higher or other duty shall be imposed on the importation into the United States of any article of the growth, produce, or manufacture of the Dominican Republic or of her fisheries; and no higher or other duty shall be imposed on the importion into the Dominican Republic of any article the growth, produce, or manufacture of the United States or their fisheries, than are or shall be payable on the like articles the growth, produce, or manufacture of any other foreign country or its fisheries." (See 15 U. S. Statutes L., p. 478.)

Testimony having been given on the part of the plaintiffs of the foregoing tendency by the plaintiffs' agent, the Government examiner, who was called as a witness for the plaintiffs, and by documentary evidence, the plaintiffs rested.

The defendant offered no testimony, but moved the court to direct a verdict for the defendant, on the ground—

34 First. That the plaintiffs' protest does not set forth distinctly and specifically the grounds of their objection to the payment of duties sought to be recovered in this suit as required by section 2931 of the U. S. Revised Statutes.

Second. On the ground that the plaintiffs had not proven facts sufficient to entitle them to recover.

The said motion was decided in favor of the defendant upon the second ground. The protest, for the purposes of the trial, was held to be sufficient.

The plaintiffs moved for a verdict in their favor.

The court refused to direct a verdict in favor of the plaintiffs, but did direct the jury to find a verdict for the defendant; to which ruling and direction plaintiffs' counsel duly excepted.

Thereupon, and on the 25th day of June, 1886, the jury, pursuant to said direction, rendered a verdict for the defendant.

And because none of said exceptions so offered and made to the rulings, instructions, and decisions of the court do appear
35 upon the records of the said trial, therefore on the prayer of the said plaintiffs, by their counsel, said judge has hereby allowed the said several exceptions, and has signed this bill of exceptions as and for the 25th day of June, 1886, the day of the trial and verdict as aforesaid, and directed the same to be filed as of said date.

ALFRED C. COXE.

36 *Assignment of Error.*

Supreme Court of the United States.

JOSEPH NETHERCLIFT, HUGH J. ANDERSON, & CHARLES ALLAN, Plaintiffs in Error,
ag't
WILLIAM H. ROBERTSON, Collector of the Port of New York, Defendant in Error.

Afterwards, to wit, on the second Monday of October term, 1886, before the justices of the said court, at the Capitol at Washington, come the said plaintiffs in error by Tremain & Tyler, their attorneys, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit:

In each and every of the several rulings of the court to which exceptions were taken, and in the refusals of the court to exclude
37 testimony to the admission of which due objection was made and exception taken, and in the refusal of the court to submit all of the testimony to the jury and to direct the jury to find a verdict for the plaintiffs in error, and in the direction of the court to the jury to find a verdict for the defendant in error, as duly excepted to; and in other respects where exceptions were taken and allowed, as more fully and at large appear by the bill of said exceptions, as the same appear of record; and that by the record aforesaid it appears that judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiffs in error, whereas by the law of the land judgment ought to
38 have been given for the said plaintiffs in error against the said defendant in error.

And the said plaintiffs in error pray that the judgment aforesaid, for the errors aforesaid and other errors in the records and proceedings, as the same appear more fully therein, may be reversed, annulled, and altogether held for nothing, and that they, the plaintiffs in error, may be restored to those things which they have lost by occasion of said judgement, &c.

TREMAIN & TYLER,
Attorneys for Plaintiffs in Error.

Endorsed: U. S. Supreme Court. Joseph Netherclift *et al.*, plaintiffs in error, against William H. Robertson, collector, &c., defendant

in error. Assignment of error. Tremain & Tyler, attorneys
39 for plaintiffs in error. Service of a copy of the within assignment of error is hereby admitted this fourth day of October, 1886. Stephen A. Walker, att'y for def't in error. U. S. circuit court. Filed Oct. 4, 1886. Timothy Griffith, clerk.

40 *Joinder in Error.*

Supreme Court of the United States.

JOSEPH NETHERCLIFT, HUGH J. ANDERSON, & CHARLES ALLAN,
Plaintiffs in Error,

vs.

WILLIAM H. ROBERTSON, Defendant in Error.

And afterwards, to wit, on the second Monday of October, in said term, the said defendant in error, by Stephen A. Walker, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

STEPHEN A. WALKER,
Attorney for Defendant in Error.

41 [Endorsed:] 9986. United States Supreme Court. Joseph Netherclift & *al.*, pl'ffs in error, *v.* W. H. Robertson, def't in error. Joinder in error. Stephen A. Walker, att'y for def't in error. Service of a copy of the within is hereby admitted this 4th day of October, 1886. Tremain & Tyler. U. S. circuit court. Filed Oct. 4th, 1886. Timothy Griffith, clerk.

42 Circuit Court of the United States for the Southern District of New York.

JOSEPH NETHERCLIFT & *al.*
vs.
W. H. ROBERTSON. } No. 9986.

I hereby consent that the plaintiffs in the above-entitled action may deposit in the registry of this court the sum of forty-eight [illegible] dollars in lieu of a bond in prosecuting a writ of error from Supreme Court of the United States.

STEPHEN A. WALK[illegible]
U. S. Attorney, South. D[illegible] N. Y.

Ordered accordingly.
October 1st, 1886.

HOYT H. WHEELER.

Endorsed: U. S. circuit court, southern district of N. Y. 9986. Joseph Netherclift & *al. vs.* William H. Robertson. Con-
43 sent and order that costs be deposited. Tremain & Tyler, p'ffs' attorneys, 167 Broadway, New York city. U. S. circuit court. Filed Oct. 1st, 1886. Timothy Griffith, clerk.

44 UNITED STATES OF AMERICA, *ss:*

To William H. Robertson, collector of the port of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October (1886), eighteen hundred and eighty-six, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Joseph Netherclift, Hugh J. Anderson, and Charles Allan are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated October 1st, 1886.

HOYT H. WHEELER.

45 [Endorsed:] 9986. U. S. Supreme Court. Joseph Netherclift *et al.*, plaintiffs in error, against William H. Robertson, collector, etc., defendant in error. Citation. Tremain & Tyler, attorneys for plaintiffs in error.

Service of a copy of the within citation is hereby admitted this second day of October, 1886.

STEPHEN A. WALKER,
Attorney for Defendant in Error.

[Stamped:] U. S. circuit court. Filed Oct. 2, 1886. Timothy Griffith, clerk.

Endorsed on cover: S. New York C. C. U. S. No. 1143. Joseph Netherclift, Hugh J. Anderson, and Charles Allan, plaintiffs in error, *vs.* William H. Robertson, collector of the port of New York. Filed October 13, 1886.

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39 for plaintiffs in error. Service of a copy of the within assign-
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1886. Stephen A. Walker, att'y for def't in error. U. S. circuit court.
Filed Oct. 4, 1886. Timothy Griffith, clerk.

40 *Joinder in Error.*

Supreme Court of the United States.

JOSEPH NETHERCLIFT, HUGH J. ANDERSON, & CHARLES ALLAN,
Plaintiffs in Error,

vs.

WILLIAM H. ROBERTSON, Defendant in Error.

And afterwards, to wit, on the second Monday of October, in said term, the said defendant in error, by Stephen A. Walker, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

STEPHEN A. WALKER,
Attorney for Defendant in Error.

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42 Circuit Court of the United States for the Southern District of New York.

JOSEPH NETHERCLIFT & *al.*
vs.
W. H. ROBERTSON. } No. 9986.

I hereby consent that the plaintiffs in the above-entitled action may deposit in the registry of this court the sum of forty-eight $\frac{85}{100}$ dollars in lieu of a bond in prosecuting a writ of error from the Supreme Court of the United States.

STEPHEN A. WALKER,
U. S. Attorney, South. Dist. of N. Y.

Ordered accordingly.
October 1st, 1886.

HOYT H. WHEELER.

Endorsed: U. S. circuit court, southern district of N. Y. 9986. Joseph Netherclift & *al. vs.* William H. Robertson. Con-
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Dated October 1st, 1886.

HOYT H. WHEELER.

45 [Endorsed:] 9986. U. S. Supreme Court. Joseph Nether-
clift *et al.*, plaintiffs in error, against William H. Robertson, collector, etc., defendant in error. Citation. Tremain & Tyler, attorneys for plaintiffs in error.

Service of a copy of the within citation is hereby admitted this second day of October, 1886.

STEPHEN A. WALKER,
Attorney for Defendant in Error.

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Endorsed on cover: S. New York C. C. U. S. No. 1143. Joseph Netherclift, Hugh J. Anderson, and Charles Allan, plaintiffs in error, *vs.* William H. Robertson, collector of the port of New York. Filed October 13, 1886.